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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 29.08.2023

+ **W.P.(C) 11448/2023**

HERITAGE HOLIDAYS PVT LTD.

..... Petitioner

Through: Mr Kapil Goel with Mr Sandeep Goel, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 10 1 DELHI

..... Respondent

Through: Mr Shlok Chandra, Sr Standing Counsel with Ms Priya Sarkar, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.44559/2023

1. Allowed, subject to just exceptions.

W.P.(C) 11448/2023 & CM Appl.44558/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. This petition concerns Assessment Year (AY) 2019-20.

3. The petitioner was issued a notice dated 15.03.2023, under Section 148A(b) of the Income Tax Act, 1961 [in short, "Act"].

4. Principally, two allegations were levelled against the petitioner/assessee.



4.1 First, it had sold the subject immovable property i.e., 53, Ground Floor, Paschim Marg, Vasant Vihar, New Delhi [hereafter referred to as “ground floor property”] for an amount which was less than stamp duty value, in contravention of the provisions of Section 50C read with Section 43CA of the Act. The information value concerning the aforesaid property was pegged at Rs.1,30,29,000/-.

4.2 Second, the petitioner had not disclosed the fact that it had received Rs.1,25,00,000/- on sale/transfer of another part of the aforementioned immovable property i.e., the basement [hereafter referred to as “basement property”]. The information value qua the basement property was pegged at Rs.1,25,00,000/-.

5. The record shows that the petitioner/assessee filed a reply on 20.03.2023.

5.1 In the reply, the petitioner/assessee indicated that it had sold the ground floor property for a consideration amounting to Rs.12,21,00,000/-. It was also indicated in the said reply that the capital gains earned were declared by the petitioner in its Return of Income (ROI).

5.2 The petitioner/assessee disclosed that as per the circle rate the value of the property was pegged at Rs.12,83,00,000/-.

6. The defence taken by the petitioner/assessee was that since the variation in the price received by the petitioner and the circle rate value was less than 5%, the transaction would fall in the safe harbour in terms of the 3rd proviso to Section 50C of the Act.



7. It is not in dispute that the 3rd proviso would be attracted to the said transaction only if the stamp duty amount paid by the petitioner is taken into account.

7.1 Towards the stamp duty, the petitioner has paid Rs.68.43 lakhs, which is taken into account.

8. Insofar as the second allegation is concerned, the petitioner/assessee has not disputed that as regards the basement property, it has received Rs.1,25,00,000/-, *albeit*, as advance.

8.1 The petitioner/assessee's stand is that on account of litigation, the buyers are unwilling to perform the agreement.

9. The record shows that the agreement to sell dated 26.03.2019, based on which the said transaction is said to have progressed, is an unregistered document.

9.1 A perusal of clause 2 of the said document would show that the petitioner/assessee has already delivered physical vacant possession of the basement property.

10. Given this position, Mr Kapil Goel, who appears on behalf of the petitioner/assessee, says that the allegation made against the petitioner/assessee is unsustainable as the first transaction concerning the ground floor property falls within the tolerance limit provided in the 3rd proviso appended to Section 50C of the Act.

10.1 As far as the basement property is concerned, it is Mr Goel's submission that although the petitioner/assessee was able to complete the transaction, the buyers, because of their own difficulties, have not come forward to perform their obligations under the agreement.



10.2 It is also Mr Goel's contention that the respondent/revenue has not provided the documents concerning the approval received for triggering reassessment proceedings against the petitioner/assessee.

10.3 Besides this, Mr Goel submits that insofar as this case is concerned, the provisions of Section 151A of the Act are applicable i.e., the proceedings should have been taken out under the faceless assessment regime.

11. Mr Shlok Chandra, learned senior standing counsel, who appears on behalf of the respondent/revenue, on the other hand, says that this is a matter in which the court should allow the reassessment proceedings to continue.

11.1 In this regard, Mr Chandra pointed out that this is one of the strange and rare cases where the stamp duty, insofar as the sale of the ground floor property is concerned, has been paid by the seller.

11.2 According to Mr Chandra, the Assessing Officer (AO) needs to examine whether there is a cash component involved in the transaction executed concerning the ground floor property.

12. Furthermore, Mr Chandra says that as regards the transaction carried out by the petitioner/assessee vis-à-vis the basement property is concerned, the provisions of Section 2(47)(v) of the Act would apply, as the petitioner/assessee has already delivered possession of the same.

13. In other words, as per the said provision, since the petitioner/assessee has parted with the possession of the basement property, the transfer has been effected.

14. Mr Chandra says that insofar as approval is concerned, the same has not been given and that the document will be furnished at the earliest.



15. As regards the submission of Mr Goel that the respondent/revenue should have continued with the regime provided pursuant to the insertion of Section 151A of the Act, Mr Chandra says that he has received instructions that compliance with regard to the faceless assessment regime has been made.

16. We have heard learned counsel for the parties.

17. Given the aforesaid position, we are of the view that apart from the fact that the petitioner has approached this court after nearly five months from the date when the order under Section 148A(d) was passed, there are aspects which the AO needs to enquire into.

18. Having regard the fact that the order under Section 148A(d) of the Act was passed on 23.03.2023, the AO may have made some progress in the matter. If we were to interdict the proceedings at this stage, against the backdrop of what has been noted hereinabove, it may, in real terms, neither help the cause of the petitioner/assessee nor the respondent/revenue.

19. Mr Chandra is right that this is one of those rare cases where the stamp duty has been paid by the seller in respect of the transaction concerning the ground floor property.

20. Furthermore, as regards the second transaction concerning the basement property, it also seems rather strange that the petitioner/assessee, after having received 50% of the sale consideration, has not pursued the buyers for the paying remaining amount, although more than four years have passed.

21. We have queried Mr Goel as to whether any suit action has been taken out by the petitioner/assessee against the buyers.



21.1 Mr Goel says no such steps have been taken.

22. Therefore, having regard to the facts and circumstances given in this case, we are not inclined to entertain the writ petition.

23. Needless to add, the respondent/revenue, which is duty-bound to furnish a copy of the document whereby approval was obtained, will do so within the next ten (10) days.

24. It is made clear that during the reassessment proceedings, the petitioner/assessee will be free to take all the legal and factual contentions.

25. The writ petition is dismissed, in the aforesaid terms.

26. Consequently, pending interlocutory applications shall stand closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 29, 2023

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